

## VILLAGE OF YELLOW SPRINGS, OHIO

### RESOLUTION 2020-36

#### AUTHORIZING THE VILLAGE SOLICITOR TO TAKE LEGAL ACTION DEFENDING VILLAGE CHARTER SECTION 6 VOTER QUALIFICATIONS

**WHEREAS**, by a vote of 891-650 at the March 17, 2020 election, voters of the Village of Yellow Springs, Ohio, approved Amendment of Section 6 of the Charter of the Village of Yellow Springs to be effective May 1, 2020, to permit non-citizen residents of the Village of Yellow Springs to vote for Yellow Springs local ballot issues and elected officials pursuant to the home rule power granted by the Charter and state law; and

**WHEREAS**, the former Village Solicitor, on August 26, 2019, provided a written legal opinion on the constitutionality of the proposed Amendment to legal counsel for the Greene County Board of Elections, which was shared with the Ohio Secretary of State before the issue went on the ballot; and

**WHEREAS**, the Greene County Board of Elections requested a draft of a registration form from the Village of Yellow Springs to implement the Charter Amendment which the Village of Yellow Springs submitted on or about July 15, 2020 for consideration at the Board's July 21, 2020 meeting, but the Board of Elections tabled consideration of the registration form at that meeting; and

**WHEREAS**, a letter from the Ohio Secretary of State to the Greene County Board of Elections ordered the Greene County Board of Elections to take no further steps to implement the registration of voters pursuant to the Yellow Springs Charter Amendment as of July 30, 2020; and

**WHEREAS**, the Greene County Board of Elections met August 13, 2020 and the Director and Chair verbally advised that the Board of Elections and staff would follow the Secretary of State's order, but took no formal action other than scheduling an executive session with the Board's legal counsel for September 15, 2020; and

**WHEREAS**, Village Council members recognize that expedited election-related litigation is outside the scope of the Village Solicitor's routine responsibilities and that the Solicitor may have a conflict which cannot be waived pursuant to the Ohio Rules of Professional Conduct, therefore legal defense of the Charter Amendment by outside counsel may result in expense to the Village; and

**WHEREAS**, Boards of Election in Ohio, and the Secretary of State, "do not have authority to sit as arbiters of the legality or constitutionality" of a charter amendment, which may become "void and unenforceable only when declared unconstitutional by a court of competent jurisdiction..." *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239, 2015-Ohio-3761, 41 N.E.3d 1229, ¶ 11; and no court of competent jurisdiction has made such a determination,

**NOW THEREFORE** be it **RESOLVED**, by Council for the Village of Yellow Springs, Greene County, Ohio, that:

**Section 1.** The Village Solicitor is authorized to engage outside counsel for the purpose of taking legal action defending Village Charter Section 6 Voter Qualifications by

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**Section 2.** This resolution is hereby declared to be an emergency measure under home rule power granted by the Charter and immediately necessary to preserve the public interest and for the health, safety and welfare of the citizens of and visitors to the Village.

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Signed: Brian Housh, President of Council

Passed:

Attest: \_\_\_\_\_

Judy Kintner, Clerk of Council

**ROLL CALL:**

Brian Housh\_\_\_\_ Marianne MacQueen\_\_\_\_ Kevin Stokes\_\_\_\_  
Lisa Kreeger\_\_\_\_ Laura Curliss\_\_\_\_